

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	
Jeri L. Callaway et al.	§	Confirmation No.: 8443
	§	
Serial No.: 10/038,202	§	Group Art Unit: 2174
	§	
Filed: December 21, 2001	§	Examiner: Pitari, Ryan F.
	§	
For: SYSTEM AND APPARATUS FOR	§	Atty. Docket: COMP:0200A/FLE/DOO
MANAGING PERSONLA DN	§	200301965-1
WORK-RELATED MATTERS	§	

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February 2, 2010

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/Matthew C. Dooley/

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**REQUEST FOR RECONSIDERATION PURSUANT TO 37 C.F.R. § 41.52
IN RESPONSE TO THE DECISION ON APPEAL MAILED DECEMBER 2, 2009**

This Request for Rehearing is being filed pursuant to 37 C.F.R. § 41.52 in response to the Board of Patent Appeals and Interferences' Decision on Appeal mailed on December 2, 2009. Specifically, this Request for Rehearing states with particularity multiple points believed to have been misapprehended or overlooked by the Board. However, in the interest of brevity, Appellants address below only those points from the Decision on Appeal that are particularly noteworthy. Accordingly, Appellants reserve the right to address additional points from either the Decision on Appeal or the previously filed Appeal Brief in a subsequent appeal of the Board's decision. To the extent that any of the arguments set forth herein are considered new arguments, Appellants assert that they are presented for good cause in accordance with 37 C.F.R. § 41.52.

The Board Misapprehended the Specification and the Appellants Arguments

In the Decision on Appeal, the Board sustained the Examiners rejection of claims 1, 2, 4-6, 8-16, 18-22, 24, and 44-47 under 35 U.S.C. § 103(a) over Raff, U.S. Patent No. 6,785,868 (hereinafter “Raff”) in view of Gotou, U.S. Patent No. 6,020,828; claims 7 and 17 over Raff in view of Gotou and Edwards et al., U.S. Publication No. 2002/0078379 (hereinafter “Edwards”); claims 25-32 in over Raff in view of Edwards; and claims 48-50 over Raff in view of Edwards and Gotou. While Appellants do not agree with the Board’s decision regarding all of the pending claims, the present Request is directed to independent claims 1, 13, and 25. Indeed, Appellants believe the Board has clearly failed to apply the most relevant case law with respect to the claim construction of independent claims 1, 13, and 25.

With regard to the Examiner’s rejection of claims 1 and 13 under 35 U.S.C. § 103(a), in the Decision on Appeal, the Board stated the following:

In particular, we address whether Raff’s calendaring program is “adapted to provide at least one calendar corresponding to family-related matters, at least one calendar corresponding to work-related matters, and at least one calendar corresponding to a merger” (emphasis added) as required by claim 1.

We give the claims their broadest reasonable interpretation. *See In re Bigio*, 381 F.3d at 1324. Furthermore, our analysis will not read limitations into the claims from the specification. *See In re Van Genus*, 988 F.2d at 1184.

Appellants’ claims simply do not place any limitation on what the term “calendar” is to be, is to represent, or is to mean, other than at least one calendar corresponds “to work-related matters,” “to family-related matters,” or a “merger” (claim 1). Thus, the calendars cannot be confined to a specific embodiment when the claims do not recite a specific embodiment. Instead we interpret a “calendar” as a schedule of events.

Furthermore, the terms “work-related” and “family related” do not change the functionality of, or provide additional function to, the “calendar” but are merely labels used to describe the calendar.

Decision on Appeal, pages 8-9 (emphasis original).

Appellants believe that the Board has misapplied the relevant law. The Board has improperly cited *In re Van Genus* for the proposition the Board will not read limitations into the claims from the specification. Appellants first remark that the recitations of independent claims 1 and 13 of “work-related matters,” “family-related matters,” and “a merger of the family-related matters and the work-related matters” do not themselves require import of matter from the specification to be properly interpreted. Accordingly, the reliance by the Board on *In re Van Genus* is improper.

Instead, the terms “work-related matters,” “family-related matters,” and “a merger of the family-related matters and the work-related matters” may be given their plain meaning, as set forth in M.P.E.P. 2101.01. Simply put, independent claims 1 and 13 recite at least one calendar corresponding to “work-related matters,” that is, matters related to a job or profession (i.e., work) as well as at least one calendar corresponding to “family-related matters,” that is, matters related to a personal life or related persons (i.e., family).

However, independent claims 1 and 13 also recite at least one calendar corresponding to “a merger of the family-related matters and the work-related matters.” The recitation of at least one calendar corresponding to “a merger of the family-related matters and the work-related matters” must also be given a plain meaning interpretation. Thus, the at least one calendar corresponding to “a merger of the family-related matters and the work-related matters” may be a calendar relating to matters related to a job or profession (i.e., work) as well as matters related to a personal life or related persons (i.e., family). Thus, because independent claims 1 and 13 recite at least one calendar corresponding to both family-related matters and the work-related matters (e.g., the calendar corresponding to “a merger of the family-related matters and the work-related matters”), the recitations directed to “family-related matters” and “work-related matters” must differ from the construction of the recitation of at least one calendar corresponding

to “a merger of the family-related matters and the work-related matters,” else the recitation of at least one calendar corresponding to “a merger of the family-related matters and the work-related matters” would be redundant.

That is, if the at least one calendar corresponding to “family-related matters” also included “work-related matters,” then there would be no need for the recitation of at least one calendar corresponding to “a merger of the family-related matters and the work-related matters” in independent claims 1 and 13, as that subject matter would already be claimed. Similarly, if the at least one calendar corresponding to “work-related matters” also included “family-related matters,” then there would be no need for the recitation of at least one calendar corresponding to “a merger of the family-related matters and the work-related matters” in independent claims 1 and 13, as that subject matter would also already be claimed. Thus, in interpreting the terms “work-related matters” and “family-related matters” by giving the terms their plain meaning, the proper interpretation of “work-related matters” includes only work-related matters, while the proper interpretation of “family-related matters” includes only family-related matters. Any other interpretation would render the recitation at least one calendar corresponding to “a merger of the family-related matters and the work-related matters” in independent claims 1 and 13 redundant.

Thus, the portion of Raff relied upon by the Examiner, and maintained by the Board in the Decision on Appeal, which discloses an “individual” calendar, which contains both personal information, such as “GET JOHN PRESENT,” and work-related information, such as “LUNCH PROPOSAL FOR ADM’S REVIEW” (*see* Raff, Fig. 10A; col. 10, lines 31-33, 49-52), cannot be properly read to teach at least one calendar corresponding to “family-related matters, at least one calendar corresponding to “work-related matters,” and at least one calendar corresponding to “a merger of the family-related matters and the work-related matters,” as recited in independent claims 1 and 13, because Raff uses the term “personal” to

describe matters that pertain to the *individual* user which may be composed of *both* the individual's work-related *and* family-related matters. *Id.*

Additionally, Appellants submit that the Board has misapplied the relevant law with respect to the claim construction of each of independent claims 1, 13, and 25. Appellants note that the Board has failed to apply the relevant and controlling case law on the issue of claim construction in the Decision on Appeal, namely *Phillips v. AWH Corp.*, 75 U.S.P.Q.2d 1321 (Fed. Cir. 2005) (*en banc*). In *Phillips*, the Federal Circuit set forth that the words of a claim “are generally given their ordinary and customary meaning” and that “the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Id.* at 1326. Moreover, the Federal Circuit held that “the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Id.* (emphasis added).

Accordingly, proper claim construction of independent claims 1, 13, and 25 must include a determination of the meaning of the recitations “family-related matter” and “work-related matter” from the point of view of a person of ordinary skill in the art in the context of the entire patent, including the specification. Contrary to the law set forth the Federal Circuit, both the Examiner, in the Examiner's Answer, and the Board, in the Decision on Appeal, failed to determine the meaning of the recitations “family-related matter” and “work-related matter” in independent claims 1, 13, and 25 from the point of view of a person of ordinary skill in the art in the context of the specification, and, thus, improperly interpreted independent claims 1, 13, and 25.

The instant application, for example, describes and illustrates at least one calendar corresponding to “family-related matters” and a separate at least one calendar

corresponding to “work-related matters.” *See* Specification, FIGS. 13A-13C; page 22, line 11 – page 23, line 2. Indeed, the specification clearly states that “each item in the work calendar 110 is clearly work-related, and each item on the personal calendar 112 is clearly related to a personal matter.” Specification, page 22, lines 12-14. Accordingly, the ordinary and customary meaning of the claim recitations a “family-related matter” and a “work-related matter” to a person of ordinary skill in the art in question at the time of the invention in the context of the entire patent, including the specification, would be that “work-related matters” includes only work-related matters (i.e., matters related to work), while the proper interpretation of “family-related matters” includes only family-related matters (i.e., matters related to family). By ignoring the ordinary and customary meaning of the claim recitations that a person of ordinary skill in the art in question at the time of the invention in the context of the entire patent, including the specification, would give independent claims 1, 13, and 25, the Board has failed to properly apply the applicable law, as set forth by the Federal Circuit.

Moreover, when the proper claim construction is applied, the portion of Raff relied upon by the Examiner, and maintained by the Board, which discloses an “individual” calendar, which contains both personal information, such as “GET JOHN PRESENT,” and work-related information, such as “LUNCH PROPOSAL FOR ADM’S REVIEW” (*see* Raff, Fig. 10A; col. 10, lines 31-33, 49-52), cannot be properly read to teach at least one calendar corresponding to “family-related matters” and at least one calendar corresponding to “work-related matters,” as recited in independent claims 1, 13, and 25, because Raff uses the term “personal” to describe matters that pertain to the *individual* user which may be composed of *both* the individual’s work-related *and* family-related matters. *Id.* Accordingly, Appellants respectfully submit that the rejections of independent claims 1, 13, and 25, as well as all claims depending therefrom, should be overturned.

Conclusion

Appellants respectfully submit that all pending claims are in condition for allowance. However, if any member of the Board wishes to resolve any other issues by way of a telephone conference, the member of the Board is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

Date: February 2, 2010

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